

STAFF RECOMMENDS DENIAL

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 801 RED RIVER STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR BUILDINGS AND STRUCTURES IN THE 25-YEAR AND 100-YEAR FLOODPLAINS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. This ordinance applies to existing buildings and structures owned by Stubb's Austin Restaurant Co., L.C. located at 801 Red River Street within the 25-year and 100-year floodplain as described in Site Plan application number SP-2009-0163C.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25-year floodplain prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the flood proofing requirement in subsection (E) of Section 25-7-94 (*Exceptions in Central Business Area*) to allow the Building Permit to be issued, but no Certificate of Occupancy issued, until the requirements in City Code Section 25-7-94 (E) are met;
- (C) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*), to exclude the buildings on the site from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (D) the prohibition against expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity prescribed by City

Code Section 25-12-3, Building Code Appendix G, Section G102.3
(*Nonconforming uses*);

- (E) the requirement that the design and construction located in flood hazard areas be in accordance with American Society of Civil Engineers Manual 24 (*Flood Resistant Design and Construction*) prescribed in City Code Section 25-12-3, Building Code Section 1612.4 (*Design and Construction*) to allow the Building Permit to be issued, but no Certificate of Occupancy issued, until the requirement is met; and
- (F) the requirement for documentation from a registered design professional prescribed in City Code Section 25-12-3, Building Code Section 1612.5 (*Flood Hazard Documentation*) to allow the Building Permit to be issued, but no Certificate of Occupancy issued, until the requirement is met.

PART 4. The variance granted in this ordinance is effective only upon the satisfaction of the following conditions:

- (A) The applicant shall execute and record, in a form acceptable to the City Attorney, a restrictive covenant prohibiting storage within the 100 year floodplain on the site any property, materials, or equipment that might constitute a safety hazard when contacted by flood waters. The City may not issue a Certificate of Occupancy for the buildings or structures on site until the applicant submits all information and documentation necessary for the restrictive covenant, and the restrictive covenant as approved by the City Attorney is filed by the applicant in the Travis County Real Property Records
- (B) The applicant shall submit a letter to the City certifying that the buildings and structures identified in phase 1 of Site Plan SP-2009-0163C will withstand the flood forces generated by the 100-year flood and that the design is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (*Flood Resistant Design and Construction*) signed by a Texas registered professional engineer or architect. The City may not issue a Certificate of Occupancy for the buildings or structures on site until the applicant submits and the City concurs with the findings in the required certification.
- (C) The applicant shall dedicate an easement to the City as required by City Code Section 25-7-152 to the limits of the 100 year floodplain, excluding the footprint of the buildings on site. The City may not issue a Certificate of Occupancy for the buildings or structures on the site until the applicant submits all information and documentation necessary for the easement, and

the easement as approved by the City Attorney is filed by the applicant in the Travis County Real Property Records.

PART 5. This variance expires if the project for which this variance is granted does not receive all necessary building permits before February 22, 2011.

PART 6. Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

PART 7. This ordinance takes effect on _____, 2010.

PASSED AND APPROVED

_____, 2010 §
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 § _____
 Lee Leffingwell
 Mayor

APPROVED: _____
 David Allan Smith
 City Attorney

ATTEST: _____
 Shirley A. Gentry
 City Clerk